

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DOROTHY M. PEELE and U.S. POSTAL SERVICE,  
POST OFFICE, Bell Mawr, NJ

*Docket No. 02-1338; Submitted on the Record;  
Issued October 2, 2002*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs' refusal to reopen appellant's claim for merit review under 5 U.S.C. § 8128(a) constituted an abuse of discretion.

On November 29, 1994 appellant, then a 47-year-old mailprocessor, sustained an employment-related contusion and aggravation of arthritis of the left foot. On January 7, 2000 she filed a recurrence claim, alleging that she was on hand use restriction and that her foot condition was worsening. Appellant had stopped work on December 13, 1999.<sup>1</sup> By letter dated March 7, 2000, the Office informed appellant of the type evidence needed to support her claim. In response, she submitted a statement in which she alleged that she was forced to work outside the restrictions imposed regarding her hand condition and medical evidence. By decision dated May 25, 2000, the Office denied that appellant sustained a recurrence of disability due to her foot condition, finding that that medical evidence submitted had no probative value regarding her foot condition.

On May 31, 2000 appellant, through counsel, requested a hearing that was held on October 23, 2000 at which time appellant testified regarding her two claims, both of which were accepted as employment related -- one for an ankle injury and the other for carpal tunnel syndrome.<sup>2</sup> She further testified that her job had changed and she could not perform the new position due to both injuries.

In a decision dated January 16, 2001 and finalized January 22, 2001, an Office hearing representative affirmed the prior decision. On March 28, 2001 appellant's attorney requested

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<sup>1</sup> The record indicates that the instant claim was adjudicated by the Office under file number 020689553. The Office had also accepted that appellant sustained employment-related bilateral carpal tunnel syndrome and adjudicated that claim under file number 020740760.

<sup>2</sup> *Id.* The record indicates that a second hearing was held that day regarding appellant's carpal tunnel syndrome claim.

reconsideration and further contended that appellant's physical injuries caused an emotional condition. In support thereof he submitted a March 15, 2001 medical report from Dr. John R. Rushton, III, a Board-certified psychiatrist. By decision dated June 26, 2001, the Office denied appellant's reconsideration request, finding the evidence submitted was irrelevant to the instant claim. The Office further noted that appellant should file a separate claim for an emotional condition. The instant appeal follows.

The Board finds that the Office did not abuse its discretion in denying appellant's request for review.

The only decision before the Board in this appeal is the decision of the Office dated June 26, 2001 denying appellant's applications for review. Since more than one year had elapsed between the date of the Office's most recent merit decision dated January 16, 2001 and finalized January 22, 2001 and the filing of appellant's appeal on April 18, 2002, the Board lacks jurisdiction to review the merits of her claim.<sup>3</sup>

Section 10.608(a) of the Code of Federal Regulations provides that a timely request for reconsideration may be granted if the Office determines that the employee has presented evidence and/or argument that meets at least one of the standards described in section 10.606(b)(2).<sup>4</sup> This section provides that the application for reconsideration must be submitted in writing and set forth arguments and contain evidence that either: (i) shows that the Office erroneously applied or interpreted a specific point of law; or (ii) advances a relevant legal argument not previously considered by the Office; or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> Section 10.608(b) provides that when a request for reconsideration is timely but fails to meet at least one of these three requirements, the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.<sup>7</sup>

With her reconsideration request, appellant contended that her psychological condition was due, in part, to her employment-related physical injuries and submitted a medical report from Dr. John R. Rushton, III, a Board-certified psychiatrist who advised that he began treating appellant in April 2000 and diagnosed carpal tunnel syndrome, bilateral, with residual weakness associated with tendinitis neuropathy and post-traumatic stress disorder, with anxieties,

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<sup>3</sup> 20 C.F.R. § 501.3(d)(2).

<sup>4</sup> 20 C.F.R. § 10.608(a) (1999).

<sup>5</sup> 20 C.F.R. § 10.608(b)(1) and (2) (1999).

<sup>6</sup> 20 C.F.R. § 10.608(b) (1999).

<sup>7</sup> See *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

depression and paranoid feelings due to employing establishment management's improper behavior. Dr. Rushton noted that appellant felt she was wronged by the employing establishment and noted appellant's complaints about her hands.

The Board finds that the Office properly denied appellant's reconsideration request. The merit issue in the instant case is whether appellant sustained a recurrence of disability due to an employment-related ankle condition. While Dr. Rushton diagnosed carpal tunnel syndrome and noted appellant's complaints about her hands, he did not specifically mention an ankle injury, merely stating that "her physical limitation and her disturbed mental state are disabling, a direct result of injuries that are job related...." He, therefore, did not link her emotional condition to the accepted ankle injury. Thus, as appellant submitted no new relevant evidence or argument in support of her request for reconsideration, the Board finds that the Office properly denied merit review of her claim.<sup>8</sup>

The decision of the Office of Workers' Compensation Programs dated June 26, 2001 is hereby affirmed.

Dated, Washington, DC  
October 2, 2002

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>8</sup> *Sherry A. Hunt*, 49 ECAB 467 (1998).